IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 4002/2006

THE NEW INDIA ASSURANCE COMPANY LTD.
v
SMT. SHARDA & OTHERS.

Date of Judgment: 26th FEBRUARY, 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Ram Singh Bhati for the appellant.

By Court:

This appeal is against the award dated 10.2.04 passed by the Commissioner, Workmen's Compensation Court, Ajmer whereby the learned Commissioner has granted a compensation of Rs. 4,03,320/- plus interest @ 12% p.a., to the claimant-respondents.

The brief facts of the case are that the deceased Rajendra Prakas @ Raju was the husband of respondent No.1 Smt. Sharda, the son of respondent No.2 and 3 and the father of respondent Nos. 4 to 8. He was hired as a driver by respondent Nos. 9 and 10 for driving their truck. In the night of 3/4th March, 2003, the said truck met with an accident. Rajendra @ Raju expired on the spot due to the said accident. Since the respondents-claimants were dependent on the deceased, they filed a claim petition before the

learned Commissioner for the sum of Rs. 4,07,700/-.

The appellant Insurance Company, as the respondent No.3 in the said claim petition, filed its written statement and denied the averments made in the claim petition. The Insurance Company claimed that the deceased did not have a valid driving licence. Secondly, that they did not receive any notice under Section 10 of the Workmen's Compensation Act, 1923 (henceforth to be referred to as 'the Act', for short). Thirdly, that the accident occurred due to the negligence of the deceased himself. After considering oral and documentary evidence, the learned Commissioner passed the award as aforementioned. Hence this appeal by the Insurance Company.

Mr. Ram Singh Bhati, learned counsel for the appellant, has raised single contention before this Court. He has challenged the direction of the learned Commissioner that the Insurance Company is liable to pay the interest @ 12% p.a. And in case the compensation amount is not paid within a period of one month, a penal interest of 18% shall be paid. According to the learned counsel it is the duty of the employer to make the payment of the compensation within one month. In case there is a lapse committed by the employer, the Insurance Company cannot be saddled with the liability of paying the interest amount. Therefore, according to the learned counsel, the learned Commissioner has erred in directing

that the Insurance Company shall pay an interest @ 12% p.a.

We have heard learned counsel and perused the impugned award.

In the case of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya & Anr. ((2006) 5 SCC 192) the Apex Court had clearly held that "the law relating to contracts of insurance is part of the general law of contract. Like any other contract, a contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense." Since it is matter of a contract, it is for the contracting party to exempt the Insurance Company from paying any interest. Therefore, an express stipulation to this effect – exempting the Insurance Company from the liability of paying the interest amount – should exist in the policy itself. In case such an express provision does not exist, then it is the liability of the Insurance Company to pay the interest amount.

In the present case, the learned counsel for the Insurance Company fairly conceded that there is no such stipulation in the Insurance Policy exempting the insurance Company from paying interest. Therefore, the insurance is certainly liable for paying the interest as directed by the learned Commissioner.

In the result, there is no force in the appeal. It is, hereby,

dismissed.

(R.S. CHAUHAN) J.

MRG.